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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN, on Behalf of Themselves and All Others Similarly Situated,, Plaintiffs, v. AT&T CORP., et al., Defendants.	No. C-06-0672-VRW **CLASS ACTION** **PLAINTIFFS CASE MANAGEMENT STATEMENT** Courtroom: 6, 17th Floor Judge: Hon. Vaughn Walker Date: May 17, 2006

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In accordance with the Court's Order of April 26, setting a Case Management Conference for May 17 (Dkt. 78), Plaintiffs submit the following Case Management Statement. Plaintiffs attempted to negotiate a joint statement with defendants, including sending a draft of this statement to defendants on May 3, 2006 requesting their input, but defendants did not respond. As described further below, this is likely because defendants have taken the position that their decision to file motions to dismiss excuses them from participation in the standard case management processes, including the negotiation of this statement. Nonetheless, plaintiffs below attempt to present defendants' positions as defendants have described them during the course of the parties' discussions.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

This case is a class action brought on behalf of all residential customers and subscribers of defendants AT&T Corp. and AT&T Inc. ("AT&T"), alleging, among other things, that AT&T is violating the Fourth Amendment of the United States Constitution and several federal statutes by conducting, on behalf of the government, warrantless, suspicionless searches and seizures of the domestic and international communications of millions of Americans, including plaintiffs. The case also alleges that AT&T has opened its key telecommunications databases to direct access by the government, disclosing detailed communications records about millions of its customers, again including plaintiffs.[1]

Plaintiffs assert that the massive suspicionless interception and disclosure by defendants of many millions of domestic as well as foreign communications, and communications records, is far broader than the one admitted to by the government so far, which is purportedly limited to foreign communications in which there is a reasonable suspicion that either the sender or the receiver is connected to Al Qaeda. Plaintiffs also contend that defendants have received no court order or other judicial authorization for this broader program, and that defendants have received no

[1] Specifically, plaintiffs allege statutory violations including without limitation: 50 U.S.C. § 1809, 18 U.S.C. §2511, 47 U.S.C. §605 and 18 U.S.C. §2702 on behalf of a nationwide class and allege all of those plus a violation of Cal. Bus. & Prof. Code §17200 on behalf of the California sub-class.

executive branch authorization that comports with the Foreign Intelligence Surveillance Act, the Wiretap Act, or any other congressionally-established procedure.

2. The principal factual issues which the parties dispute:

Defendants have not yet stated which factual issues raised in the Complaint they dispute.

3. The principal legal issues which the parties dispute:

On March 31, 2006, plaintiffs filed a preliminary injunction motion seeking interim relief on their claims. (Dkt. 16). The Court has set a schedule for that motion, with a hearing date of June 21, 2006.

On April 28, defendants filed two Motions to Dismiss. The AT&T Corp. Motion (Dkt. 86) seeks to dismiss the case under various theories of immunity and lack of standing raised under FRCP 12(b)(6). The AT&T Inc. Motion (Dkt. 79) asserts that this Court lacks jurisdiction over AT&T Inc. Defendants have asked that these motions be specially set for hearing on June 8, 2006, so that they may be heard prior to Plaintiffs' motion for preliminary injunction. Plaintiffs have opposed this request, asking that these motions be heard according to the Court's ordinary scheduling process (Dkt. 106).

Also on April 28, the United States government ("DOJ") filed a Statement of Interest pursuant to 28 U.S.C. § 517, stating its intention to intervene and move to dismiss on May 12 on the basis of the state secrets privilege. (Dkt. 82). DOJ has asked that their planned motion be heard "in conjunction with" the parties pending motions and that discovery be stayed until after their motions are decided.

4. The other factual issues [e.g. service of process, personal jurisdiction, subject-matter jurisdiction or venue] which remain unresolved for the reasons stated below and how the parties propose to resolve those issues:

As noted above, Defendant AT&T, Inc. has brought a motion claiming a lack of personal jurisdiction. Defendant AT&T Corp. has not.

5. The parties which have not been served and the reasons:

All currently-named parties have been served.

6. The additional parties which the below-specified parties intend to join and the

intended time frame for such joinder:

The Department of Justice has indicated its intent to intervene in this case, to assert the military and states secrets privilege and to move to dismiss the case. The Department of Justice has stated its intent to file those motions by May 12, 2006.

7. The following parties consent to assignment of this case to a United States Magistrate Judge for [court or jury] trial: None.

ALTERNATIVE DISPUTE RESOLUTION

8. The parties have not filed a Stipulation and Proposed Order Selecting an ADR process.

9. The parties do not believe that ADR is appropriate for this case. The ADR Phone Conference is scheduled for May 11, 2006.

DISCLOSURES

10. Defendants have asserted that they will not be providing any disclosures because they have moved to dismiss. Plaintiffs assert that the filing of a motion to dismiss does not dispense with the parties' obligations under Rule 26 and are preparing their initial disclosures.

DISCOVERY

11. Plaintiffs contacted defendants and scheduled a conference under F.R.C.P. 26(f) for April 25, 2006, in accordance with the court's then-existing schedule setting a CMC on May 16 (Dkt. 7-1). During the conference, however, defendants asserted that their intention to file a motion to dismiss on April 28 relieved them of any obligation to conduct a Rule 26(f) conference and further excused them from any of the remaining initial case management requirements, including negotiation of the joint case management conference statement. Defendants then refused to conduct the Rule 26(f) conference in any meaningful way and further asserted that since the conference did not occur, discovery could not commence.

Plaintiffs have a pending motion for preliminary injunction, which the Court has scheduled for hearing on June 21, 2006. In connection with that motion, plaintiffs have served a narrow Rule 30(b)(6) notice of deposition and an associated document request on defendant AT&T Corp. These discovery requests are tailored to address only issues raised by the preliminary injunction motion.

They are also directed to only one of the defendants, AT&T Corp., which has not challenged jurisdiction.

Defendants have refused to comply with the 30(b)(6) notice, but have not filed a motion for a protective order. The parties met and conferred regarding the deposition notice during the April 25, 2006 conference call.

On May 1, plaintiffs filed a letter brief regarding their request for an order compelling compliance by AT&T with limited discovery on the matters raised by the preliminary injunction motion. (Dkt. 94). Defendants responded on May 2 (Dkt. 103) requesting that the issue be discussed at the May 17, 2006 conference set by the Court.

TRIAL SCHEDULE

12. Plaintiffs believe that the case can be brought to trial within 18 months if discovery commences according to the normal rules of this Court. Defendants believe it is premature to schedule a trial date.

DATED: May 4, 2006

ELECTRONIC FRONTIER FOUNDATION

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the following non-CM/ECF participants:

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